

REMARKS

Applicant has amended claims 12, 18, 23, and 29. These changes have been made to place the claims in better form for examination and to further obviate the 35 U.S.C. §§102(b), 103(a), and 112 rejections as set forth in the Office Action dated October 7, 2010. It is believed that none of these amendments constitute new matter. It is submitted that these amendments obviate the rejections. Withdrawal of these rejections is respectfully requested.

The Examiner has rejected claims 12, 14-21, 23-26, 29, and 31 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Examiner states that in claim 12(a) it is unclear whether the deletion, rearrangement, or mutation is referring to the enzyme or the gene encoding the enzyme. The Examiner states that the term “increased” in claim 12(c) is a relative term lacking a comparative basis. The Examiner states that in claims 23 and 29, the combination of *CL* allele (DNA) and capsanthin-capsorubin synthase (enzyme) is unclear. Applicant has amended claims 12. Applicant has amended claims 23 and 29 to remove the reference to the capsanthin-capsorubin synthase enzyme, which is encoded by allele *Y*. Applicant refers the Examiner to pages 9-12, Tables 1 and 2, where side-by-side comparisons show that the plants of the instant invention have higher sucrose and ascorbic acid than the yellow pepper “Fiesta”, which has genotype *yy;CLCL*. Thus, in claims 23 and 29 the reference to having a dominant *CL* allele in combination with a *Y* allele is incorrect. Withdrawal of this rejection is respectfully requested.

The Examiner has rejected claims 12, 14-21, 23-26, 29, and 31 under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The Examiner states that the specification does not provide support for crossing a first parent with a deletion, rearrangement or mutation in the enzyme capsanthin-capsorubin synthase with a second parent having a recessive *cl* allele. Applicant has amended claims 12, 23, and 29. Additionally, Applicant refers the Examiner to page 6, lines 23-29, where an example of parent one, having a genotype of *Y/Y, cl/cl*, can be crossed with parent two, having a genotype of *y/y, CL/CL*, and the resultant offspring (*F*₁) will be *Y/y, CL/cl*. The method for first identifying a parent plant with the *cl* allele is found on page 6, lines 14-22, and the method for first identifying a parent plant with the *y* allele is found on page 5, lines 7-32 and page 6, lines 1-13. Withdrawal of this rejection is respectfully requested.

The Examiner has rejected claims 18, 23, and 29 for the recitation of “green immature”. The Examiner also notes that claim 12 recites “ripe green fruit”. Applicant has amended claims 12, 18, 23, and 29. Additionally, Applicant refers the Examiner to page 9, lines 24-29, for support for these amendments. Withdrawal of this rejection is respectfully requested.

The Examiner has rejected claims 12, 14-21, 23-26, 29, and 31 under 35 U.S.C. §102(b) as anticipated by, or in the alternative, under 35 U.S.C. 103(a) as obvious over Smith, P.G. (*J. Hered.*, Vol. 41, No. 5, May 1950, pp 138-140) in light of Shiffriss et al. (*Euphytica*, Vol. 60, 1992, pp 123-126), Park et al. (*Korean J. Plant Path.*, Vol. 5, No. 3, 1989, pp 262-270) and Osuna-Garcia et al. (*J. Ag. Food Chem.*, Vol. 46, No. 12, Dec. 1998, pp. 5093-5096). Applicant has amended claims 12, 18, 23, and 29. The Examiner states that Smith, P.G. teaches a method whereby a plant of the genotype *yy;clcl* can be obtained. Applicant submits that Smith, P.G. does not teach a fruit of the genus *Capsicum* having the combined sucrose and ascorbic acid content of the instant invention. Shifress et al. teaches several modes of inheritance for a complex three-gene model of fruit pigmentation, with emphasis on the white color, and does not teach sucrose or ascorbic acid levels of any of the described fruit. The plants of instant invention unexpectedly yield a sweet, green fruit resulting from the combination of recessive alleles at two genetic loci in green peppers. Park et al. teaches that red fruit has higher sucrose content than green fruit, whereas the plant of the instant application has green fruit with a higher sucrose content than the red fruit designated ‘Special’ and ‘Oblix’ in Table 1 of the specification. Osuna-Garcia et al. teaches endogenous levels of ascorbic acid (Vitamin C) in red fruit ranging from 14.8 to 276.6 mg/100 g fresh weight, and that these levels are influenced by the availability of light. The plants of the instant invention teach a method of obtaining a green fruit with increased levels of ascorbic acid. Moreover, none of the prior art stated above teach sucrose content, or teach the combination of ascorbic acid and sucrose content of the instant invention. Therefore, withdrawal of this rejection is respectfully requested.

The Examiner has rejected claims 12, 14-21, 23-26, 29, and 31 under 35 U.S.C. §102(b) as being anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Shiffriss et al. (*Euphytica*, Vol. 60, 1992, pp 123-126) in light of Park et al. (*Korean J. Plant Path.*, Vol. 5, No. 3, 1989, pp 262-270) and Osuna-Garcia et al. (*J. Ag. Food Chem.*, Vol. 46, No. 12, Dec. 1998, pp. 5093-5096). Applicant has amended claims 12, 18, 23, and 29. The Examiner states that Shifress et al. teaches two crosses which are encompassed by the claimed invention. Applicant

respectfully disagrees. Shifress et al. teaches several modes of inheritance for a complex three-gene model of fruit pigmentation, with emphasis on the white color, and does not teach sucrose or ascorbic acid levels of any of the described fruit. The plants of instant invention yield a sweet, green fruit resulting from the epistatic relationship of recessive alleles at two genetic loci. Park et al. teaches away from the instant invention by describing red fruit which has higher sucrose content than green fruit, whereas the plant of the instant application has green fruit with a higher sucrose content than the red fruit designated 'Special' and 'Obliv' in Table 1 of the specification, and increased ascorbic acid content. The plants described in Osuna-Garcia et al. are red peppers which have a different genotype than the instant invention. Additionally, the red peppers of Osuna-Garcia et al. have endogenous levels of ascorbic acid (Vitamin C) in red fruit ranging from 14.8 to 276.6 mg/100 g fresh weight, and the authors report that these levels are influenced by the availability of light. The plants of the instant invention are green, yet have increased levels of ascorbic acid as the red fruit disclosed in Osuna-Garcia et al. This is due, not to light availability as taught in Osuna-Garcia et al., but to the unique allelic combination of the instant invention. Therefore, the plant of the instant invention is unexpected and phenotypically different from the plants of Shifress et al., Park et al., and Osuna-Garcia et al. Withdrawal of this rejection is respectfully requested.

In view of the above amendments and remarks, it is submitted that the claims satisfy the provisions of 35 U.S.C. §§102(b), 103(a) and 112. Reconsideration of this application and a notice of allowance are requested.

RESPECTFULLY SUBMITTED,					
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